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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 34 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHARATKUMAR HIRABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 34 of 2001
MRS MADHUBEN SHARMA for Petitioners No. 1-4
MR S.S.PATEL, ADDL.PUBLIC PROSECUTOR for Respondent No. 1
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 04/02/2002

ORAL JUDGEMENT

The petitioners herein are the owners of licensed

fire arms, pistol/revolver, which came to be seized in connection with an offence registered with Vadnagar Police Station C.R No. 96/99 under the Explosive Substances Act against one Hiteshkumar Harikrishnabhai Brahmashatriya, who seeks indulgence of this Court by preferring this petition on being aggrieved by an order passed by Additional Sessions Judge, Mehsana in Criminal Revision Application No. 81/2000 before him on 18.7.2000. The said Revision Application arose out of an order passed by learned JMFC, Vadnagar below their applications for return of the said muddamal weapons seized by the Police in connection with the said offence. Learned JMFC had, while passing the order in favour of the applicants, imposed certain conditions, which had aggrieved the applicants. Learned Addl. Sessions Judge while partially accepting the Revision Application, deleted most of the conditions imposed by learned JMFC, but imposed two conditions which has aggrieved the petitioners and hence this petition.

2. The Investigating Agency on some tip-off had conducted a raid in the premises of Hiteshkumar Harikrishnabhai Brahmashatriya, where he runs his business for arms and ammunitions. During the raid, excess and unaccounted quantity of gun powder was found. During the interrogation, he revealed that he had sold weapons to the present petitioners. The said weapons were therefore seized by the investigating agency. Since the weapons were not returned, the petitioners approached the Police authorities and then the District Magistrate/Collector. The Collector on being satisfied that the petitioners are legitimate licence holders of weapons and the weapons are legitimately owned by them and on being satisfied that the weapons are not the subject matter of the case in question, directed the investigating officer to tender an explanation for not returning the weapon to the applicants and to return the weapon within two days (Annexure "C"). The office of the DSP by communication dated 10.4.2000, informed that the weapons can be obtained by them through JMFC, Vadnagar. The petitioners therefore approached learned JMFC with appropriate application and learned JMFC passed the impugned order directing return of the respective weapons upon certain conditions.

3. Aggrieved by the said order, the petitioners approached Sessions Court with Criminal Revision Application. Learned Additional Sessions Judge while passing the impugned order, partly accepted the Revision Application and directed return of the weapons upon certain conditions including production of true copy of

the Passport and obtaining permission of the Court in case of an upcountry visit and to maintain the weapon in the same condition and to produce the same and when called for by the investigating officer or the Court. Aggrieved by these conditions, the petitioners have approached this Court.

4. Mrs. Sharma, learned Advocate appearing for the petitioners submitted that the petitioners are not the accused persons and they are legitimate owners of licenced weapons which are seized by the investigating officer without any reason. The weapons are not the subject matter of the case in question. The subject matter is the excess gun powder and therefore, these licensed weapons ought to have been returned to the petitioners without any condition. She submitted that the direction of keeping the weapons in the same condition would result into an impossibility of its use, which would frustrate the very purpose of giving the licence to the petitioners for holding a weapon. Since the petitioners are not involved in any offence, condition regarding filing of a certified copy of a Passport and obtaining permission of the Court before going abroad ought not to have been imposed and this petition may therefore be allowed by quashing the conditions imposed by learned Additional Sessions Judge while passing the impugned orders.

5. Learned Additional Public Prosecutor Mr. Patel opposes to this petition. He submitted that the conditions are imposed for safety. He however, does not dispute the factual part of the contentions raised before this Court.

6. When it is not disputed that the petitioners are not involved in any offence; that the weapons in question are legitimately owned by them and are licensed weapons and that none of the weapons are the subject matter of the case in question, the seizure of the weapons in the first instance and imposition of conditions while returning the weapons were uncalled for. Imposition of conditions would result into curtailment of the liberty of the petitioners without any reason or justification. In the opinion of this Court, therefore the Courts below have committed an error while imposing these conditions and exceeded their authority. No such conditions were required to be imposed and the petition therefore deserves to be allowed. The petition is allowed. conditions imposed in the impugned order of learned Additional Sessions Judge while directing return of the weapons in question are therefore deleted. The weapons

would be returned to the petitioners after following due procedure. The petitioners would ofcourse be bound by the conditions of the licence. Rule made absolute. Direct service permtited.

(A.L.Dave, J.)

*/Mohandas